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NO. 82-446

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

DALLAS COUNTY HOSPITAL DISTRICT,
Petitioner,

VERSUS

DALLAS ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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## ISSUES PRESENTED

### I.

**WHETHER A HOSPITAL OWNED AND OPERATED BY A GOVERNMENTAL SUBDIVISION FOR THE SOLE PURPOSE OF TREATING HUMAN ILLS, IS A PUBLIC FORUM AVAILABLE TO MEMBERS OF THE GENERAL PUBLIC TO EXERCISE THEIR RIGHTS UNDER THE FIRST AMENDMENT.**

### II.

**WHETHER PETITIONER'S "NO SOLICITATION" RULE REGULATING SOLICITATION ON HOSPITAL PROPERTY VIOLATES THE FIRST AMENDMENT.**

## CERTIFICATE OF INTERESTED PARTIES

The undersigned attorneys of record for Dallas Association of Community Organizations for Reform Now, et al., certify that the following listed parties have an interest in the outcome of this case:

PARTIES:

1. Leon Gowans, Respondent.
   4218 Montie
   Dallas, Texas 75210

2. Scott Holladay, Respondent.
   4415 San Jacinto  4415 San Jacinto
   Dallas, Texas 75204

3. Dallas ACORN, Respondent.
   4415 San Jacinto
   Dallas, Texas 75204

4. Dallas County Hospital District, Petitioner.
   5201 Harry Hines Boulevard
   Dallas, Texas 75235

The undersigned counsel certify that the following attorneys have an interest in the outcome of this case on behalf of their respective clients:

FOR THE RESPONDENT:

1. Mr. Roger Albright
   and the firm of
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   Dallas, Texas 75247

**FOR THE PETITIONER:**

1. **Mr. Earl Luna**
   **and the law offices of**
   **EARL LUNA, P.C.**
   **2416 LTV Tower**
   **Dallas, Texas 75201**

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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1981

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DALLAS COUNTY HOSPITAL DISTRICT,
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# BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

## OPINION BELOW

The opinion of the Court of Appeals (Petitioner's Appendix A) is reported at 670 F.2d 629.

## JURISDICTION

The Judgment sought to be reviewed was entered by the United States Court of Appeals for the Fifth Circuit on March 19, 1982, and is reported at 670 F.2d 629. Petitioner's motion for rehearing and suggestion for rehearing en banc

were denied on June 18, 1982. Petition for certiorari was filed within ninety days of that date.

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

## STATUTES, RULES AND CONSTITUTIONAL PROVISIONS INVOLVED

First Amendment to the Constitution of the United States (Petitioner's Appendix F).

Article 4494n, Vernon's Annotated Texas Statutes (Petitioner's Appendix G).

## STATEMENT OF THE CASE

In January, 1979, Plaintiffs filed their Complaint seeking injunctive relief from the enforcement of Defendant's "no solicitation" rule, which prohibited Plaintiffs from distributing informational leaflets related to health care issues on Parkland Premises.

Plaintiffs contend that portions of the Parkland Hospital premises were public forums suitable for protected First Amendment activities subject to reasonable time, place, and manner restrictions. Further, Plaintiffs asserted that the Defendant's "no solicitation" rule operated as a blanket ban on all First Amendment activities and allowed the administrator of the Defendant to selectively permit or prohibit First Amendment activity on the basis of its content and subject matter in an arbitrary, uncontrolled fashion.

Parkland Memorial Hospital, (Parkland), in Dallas, Texas, is owned and operated by Defendant Dallas County Hospital District. Various portions of Parkland are used for emergency

care, inpatient hospital care and outpatient care. The Outpatient Clinic is a five story annex to the main part of the hospital, and is entirely separate from the main portion of the hospital. The clinic provides medical care to patients who are ambulatory, which means that they are well enough to walk in, receive care, and walk out. Parkland is the primary source of health care for the indigent in Dallas County, Texas.

Plaintiff ACORN is an organization of low to moderate income families which operates through neighborhood groups to promote social and economic changes. One of the issues which ACORN addresses is the quality of health care for the indigent population. ACORN prepared leaflets addressing the deficiency in the delivery of outpatient health care at Parkland and the method whereby such deficiencies could be remedied. On Saturday, September 2, 1978, ACORN members entered the main lobby of Parkland to read the leaflet identified as Plaintiff's Exhibit 3. This event was covered by local news media as were other newsworthy events at Parkland. On September 11, 1978, ACORN members attempted to distribute the second leaflet, Plaintiff's Exhibit 4, to persons in the outpatient waiting areas. On both occasions Plaintiffs peacefully left when asked to do so by Defendant's security officials.

Defendant maintained a "no solicitation" rule which reads,

> For the protection of our employees and patients, solicitation of any kind on hospital premises is prohibited without prior written approval of the Hospital Administrator.

The Administrator uses the following definition of solicitation in enforcing the rule: "Solicitation means to accost, to influence to do evil, to agitate and create anxiety".

The Parkland premises cover twenty three acres, including streets, sidewalks, and parking lots used by staff, patrons and visitors. The Outpatient Clinic waiting area contains posters, pamphlets, magazines and newspapers, and no attempt is made to screen the type or content of the periodicals, or restrict the dissemination of newspapers, even when they contain derogatory news stories concerning Parkland.

Defendant's Board of Managers voluntarily meets monthly in the auditorium located on the first floor of Parkland. Inpatients and outpatients are allowed to attend these meetings, as are members of the general public such as ACORN members and the news media. These meetings often include discussion of controversial issues related to the operation of Parkland and the rendition of health care to the indigent. Although Plaintiff has never attempted to distribute leaflets at such a meeting, Defendant has indicated that such distribution would not be allowed without content control.

The District Court entered Judgment for Defendant on November 8, 1979, holding that although Plaintiff's conduct was protected by the First Amendment, Parkland was not a public forum and that the nature of Plaintiff's leafletting activity and the contents of those leaflets were incompatible with the activities of the hospital. On September 25, 1981, a panel of the United States Court of Appeals for the Fifth Circuit affirmed the trial court opinion holding that conditions at Parkland warranted the implementation of a blanket ban on First Amendment activities in all parts of the hospital premises, and that such congested conditions removed any need to address the vagueness or overbreadth of the Defendant's "no solicitation" rule or its discriminatory, content-based application.

In response to ACORN's Suggestion for Rehearing En Banc, a majority of the panel modified its prior opinion,

holding that Parkland is a public forum, whose use may be limited by reasonable time, place and manner restrictions and that the First Amendment was violated by unreasonable and unequal restrictions on access to public property, as well as by the delegation of authority to a single person to determine who may use public property for free speech, such as was done by the Defendant through its "no solicitation" rule.

## REASONS FOR DENYING THE PETITION

Petitioner Parkland asserts that the decision of the Court of Appeals should be reviewed by this Court to resolve the conflict existing in lower courts on whether a hospital, owned and operated by a governmental subdivision for the sole purpose of treating of human ills, is a public forum. A careful reading of the Court of Appeals decision reveals, however, that such purportedly conflicting issue was not the issue addressed by the Court below, and that no conflict exists between the holding of the Panel below and the established law of this Court or the other Circuit Courts.

### 1. THE HOLDING OF THE FIFTH CIRCUIT WITH REGARD TO THE ISSUE OF THE PUBLIC FORUM IS NOT IN CONFLICT WITH OTHER CIRCUIT COURTS OR THE SUPREME COURT OF THE UNITED STATES.

Although the Fifth Circuit did indeed hold portions of Parkland Hospital to be "a limited public forum", (670 F.2d at 630, 631), such a decision is not in conflict with the decisions of other Appellate Courts cited by the Petitioner, nor is it in conflict with the settled principles of First Amendment law announced by this Court.

In accordance with established precedents, the Panel, citing *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51,

89 S.Ct. 935, 938-39, 22 L.Ed.2d 162, 167 (1969), finds that "the First Amendment is violated by unreasonable and unequal restrictions on access to public property, as well as by the delegation of authority to a single person to determine who may use public property for free speech". (670 F.2d at 632). Nevertheless, the Court holds that "what may be forbidden is expression that interferes with the functioning of the hospital", (670 F.2d at 632), and that "obviously, regulations must exist so that the primary purpose of a medical facility must be fulfilled and not impeded, . . . " Further, the decision of the Fifth Circuit is even more restrictive than required under the present case law of this Court, holding that "the central question would be 'whether the manner (and, we add, content) of expression is basically incompatible with the normal activity of a particular place at a particular time.'" *Greer v. Spock,* 424 U.S. 828, 843, 96 S.Ct. 1211, 1220, 47 L.Ed.2d 505, 517-18 (Powell, J., concurring) (quoting *Grayned v. City of Rockford,* 408 U.S. 104, 116, 92 S.Ct. 2294, 2303, 33 L.Ed.2d 222, 232, (1972)); see id. at 840, 96 S.Ct. at 1218, 47 L.Ed.2d at 515 (majority opinion)." (670 F.2d at 631, n.2).

The panel in no way held that the mere fact that a hospital is owned and operated by a governmental subdivision created a public forum for all purposes. Rather, the panel, recognized that the Parkland premises cover twenty three acres, including over a thousand feet of sidewalks, and several large parking lots and streets. These streets and sidewalks do not differ in form or function from those which were before the Court in *Hague v. Committee for Industrial Organization,* 307 U.S. 496, 515, 59 S.Ct. 954, 964 (1939), in which Justice Roberts, originating the modern public forum doctrine, held:

> Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for

purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.

Likewise, the Panel acknowledged that the "testimony by the Administrator indicated that newspapers and pamphlets from groups other than ACORN are permitted to be placed in the hospital on the basis that they are unlikely to cause anxiety to patients when sold in various parts of the hospital or placed in the reading rack in the out-patient waiting room". (670 F.2d at 631).

The panel, recognizing that "a valid time, place, and manner must also 'serve a significant governmental interest' *Virginia Board of Citizens Council,* 445 U.S. 771, L.Ed.2d 345, 96 S.Ct. 1817 (1976)" *Heffron v. International Society for Krishna Consciousness,* 452 U.S. 640, 307, 100 S.Ct. 2559, 69 L.Ed.2d 298, (1981), merely held that "a public hospital's rules should set forth standards that allow some freedom of expression outside patient areas, for example, on the sidewalks and in the parking lots, that would cause little harm or disturbance to the hospital's operation." (670 F.2d at 632). Thus, while the panel reaffirmed the "principle that the board of a hospital, operating public property devoted to a particular purpose, may adopt rules to preserve the property for the use for which it is lawfully dedicated", (670 F.2d at 632), they struck down the hospital's "no solicitation" rule as vague, overbroad, content-based and without standards.

A rule such as Defendant's in the context of hospitals is precisely the type of broad prohibition which the Supreme Court found to be invalid in *NLRB v. Baptist Hospital, Inc.,* 422 U.S. 773, 92 S.Ct. 2598 61 L.Ed.2d 251 (1979) and *Beth Israel Hospital v. NLRB,* 437 U.S. 483, 98 S.Ct. 2463,

57 L.Ed2d 370 (1978).

Specifically, the Court in *NLRB v. Baptist Hospital,* supra, at 787-788 stated:

> ". . . experience in cases such as *Beth Israel* and the present one makes clear that solicitation in at least some of the public areas of hospitals often will not adversely affect patient care and disturb patients.

As noted by the Court these union solicitation cases were decided pursuant to the rights and liabilities created by the National Labor Relations Act and,

> Under the Act, the task of the Board, subject to review by the Courts, is to resolve conflicts between Section 7 rights and private property rights, "and to seek a proper accommodation between the two". The task of the Board and the reviewing courts under the Act, therefore, stands in conspicuous contrast to the duty of the Court in applying the standards of the First Amendment, which requires "above all else that expression must not be restricted by government because of its message, its ideas, its subject matter, or its content".

*Hudgens v. NLRB,* 424 U.S. 507, 47 L.Ed.2d 196, 96 S.Ct. 1029 (1976) citing, *Central Hardware Co. v. NLRB,* 407 U.S. 539, 33 L.Ed.2d 122, 92 S.Ct. 2238. Thus the standards to be applied to Parkland, pursuant to First Amendment analysis, are even more stringent than those applied by this Court in the context of union solicitation.

The Defendant made no showing that Plaintiff's conduct creates a "material and substantial interference . . . or involves substantial disorder and invasion of the rights of others" which would justify a total on Plaintiff's activities in all

parts of the hospital premises. *Tinker v. Des Moines Independent School District,* 393 U.S. 503 at 513, 21 L.Ed.2d 731, 89 S.Ct. 733 (1969). There has been, and can be, no showing of a basic incompatibility between the silent leafletting of a limited number of persons on the sidewalks and streets of Parkland leading to the boundaries of those premises and the activities of Parkland conducted within the hospital portions of those premises.

The panel below recognized its duty to determine whether the "no solicitation" rule serves a significant governmental interest, and whether that interest can be served by less intrusive restrictions. See *Heffron, supra,* 452 U.S. 640, 69 L.Ed. 307-308, 310, 311, and held that "Parkland 'may serve its legitimate interests, but it must do so by narrowly drawn regulations designed to serve those interests without necessarily interfering with First Amendment freedom . . . Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone . . .'" *Village of Schaumburg v. Citizens for a Better Environment,* 444 U.S. 620 at 667, 63 L.Ed.2d 73, 100 S.Ct. 826 quoting *NAACP v. Button,* 371 U.S. 417, 438 9 L.Ed.2d 405, 83 S.Ct. 328 (1963)". See also *Grayned v. City of Rockford,* 408 U.S. 104, 116-117, 33 L.Ed.2d 222, 92 S.Ct. 2294 (1972).

The Defendant thus operates large, varied premises which include portions which are traditional public forums and other portions which the Defendant, through the conduct set forth hereinabove, has opened up as a public forum. Nevertheless, the Defendant has limited "the use of a forum to people whose views it finds acceptable, but [denying] use to those wishing to express less favored or more controversial views . . . [i]t may not select which issues are worth discussing or debating in public facilities. There is an equality in status of the field of ideas and government must afford all points of view an equal opportunity to be heard. Once the forum is

opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say." *Police Department of Chicago v. Moseley*, 408 U.S. 92, 33 L.Ed.2d 212, 92 S.Ct. 2286 (1972).

Even the Petitioner, citing *Clifford v. Moritz*, 472 F.Supp. 1094 (S.D. Oh., 1979) acknowledges that "if the public entity opens the hospital up as a limited public forum, it must do so on a nondiscriminatory basis . . . [and that] . . . a selective exclusion from a public place required a substantial if not compelling justification" (Petition for Writ page 19). Given the fact that Parkland has opened up its facilities for public board meetings and every would-be magazine salesman and pamphleteer, it cannot now selectively exclude the Plaintiff's protected expression merely because it dislikes the message.

2. THE PETITIONER'S "NO SOLICITATION" RULE VIOLATES THE FIRST AMENDMENT AND MUST BE STRUCK DOWN REGARDLESS OF THE DETERMINATION OF THE PUBLIC FORUM ISSUE.

Likewise, the Petitioner, in claiming that "if Parkland is not a public forum, the 'no solicitation' rule is clearly constitutional" and citing *Greer v. Spock*, in support of such a bold statement, clearly misunderstands the recent pronouncements of this Court. As the Court stated in *U.S. Postal Service v. Council of Greenburg Civic Association*, 453 U.S. 114, 69 L.Ed.2d 517, 101 S.Ct. 2676 (1981) at note 7,

> The First Amendment prohibits Congress from "abridging freedom of speech, or of the press," and its ramifications are not confined to the public forum first noted in *Hague v. CIO*, 307 U.S. 496, 83 L.Ed. 1423, 59 S.Ct. 954 (1939). What we hold is the principle reiterated by cases such as *Adderley v. State of Florida*, 385 U.S. 39,

17 L.Ed. 2nd 149, 87 S.Ct. 242, (1966), and *Greer v. Spock, supra,* that property owned or controlled by the government which is not a public forum may be subject to a prohibition of speech, leafletting, picketing, or other forms of communication without running afoul of the First Amendment. Admittedly, the government must act reasonably in imposing such restrictions, *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 130-131, 53 L.Ed.2d 629, 97 S.Ct. 2532 (1977), and a prohibition must be content neutral.

Although Defendant's "no solicitation" rule on its face did not address content or subject matter, it is enforced on the basis of content. The Administrator entrusted with the approval of solicitations under the Defendant's "no solicitation" rule, testified that he would not approve Plaintiff's leaflets since he thinks, "there are some misstatements here" (Record page 133). The "misstatements" consist of Plaintiff's position on the public issue of neighborhood health care clinics.

The fact that the Administrator was solely concerned with preventing criticism of Parkland rather than preventing a supposed anxiety-creating environment for patients is underscored by the manner in which the existing periodical racks in the waiting rooms are maintained and controlled. As noted by the Panel below, the Administrator testified that he did not know what kind of periodicals were placed on the periodical racks, how they got there, who furnished them, and that no one screened the periodicals to determine their appropriateness before authorizing their placement on the racks in the waiting areas. Nevertheless, despite this total disregard for the type or content of materials made available to occupants of the waiting room, the Administrator asserts that publications could not be put there unless he determined them to be "relevant" and "factually correct" (Record page 113-114).

Such restrictions are exactly the type of arbitrary discretion vested in some governmental authority which the Supreme Court has "condemned as inherently inconsistent with a valid time, place and manner regulation because such discretion has a potential for becoming a means of suppressing a particular point of view. [cites omitted]". *Heffron, supra.* For example, the Board of Managers of Defendant, Parkland, holds their monthly board meetings in the first floor auditorium of Parkland Hospital, since "the auditorium is probably the most accessible place in the hospital for people to come to and that is why the meetings are here" (Record page 98). "It is the place that would least disrupt any kind of activity going on in the hospital" (Record page 99). Nevertheless, Defendant asserts that approval of distribution of even content-approved leaflets by individuals standing outside the door of the Parkland auditorium, addressing the same issues raised in the public board meetings, would "depend on the leaflet" (Record page 125). Such an excessive delegation of unfettered discretion has the effect "to empower a single official to inconvenience and disorder. By such devices official authority can become an instrument of arbitrary suppression of opinion on public questions'." *Wolin v. Port of New York Authority,* 392 F.2d 82 (1968) citing *Cox v. State of Louisiana,* 379 U.S. 559, 95 S.Ct. 476, 13 L.Ed.2d 487 (1965).

If, as here, either the enactment or the enforcement of the "no solicitation" rule is based in any way "on the content of the speech or message, that action must be scrutinized more carefully to ensure that communication has not been prohibited 'merely because public officials disapprove the speaker's view'. *Consolidated Edison Company v. Public Service Commission,* 447 U.S. 530, 65 L.Ed.2d 319, 100 S.Ct. 2326 (1980)", *U.S. Postal Service, supra,* at 132.

The Petitioner with its shrill claim that the decision of the panel must be overturned "in order to prevent irreparable

damage to our health care institutions" (Petition for Writ page 201), grossly exaggerates the effects of the panel's decision on either Parkland or any other hospital. As the panel held, "Parkland need not allow disruption of the hospital or interference with patient care—by proper rules, with fixed standards, such disruption can be forbidden". (670 F.2d at 632). What the panel strikes down is the present rule which they find to be unconstitutionally vague and overbroad, and which contains no time, place or manner restrictions nor any definition by objective standards of the literature that may be forbidden because of potential interference of the hospital's administration, and which is applied by the hospital Administrator at his sole discretion.

With regard to the unconstitutional vagueness, the panel holds that as written "the present 'no solicitation' rule at Parkland is not vague—no solicitation at all is permitted, but that in application, it is clear that some literature is allowed on the premises of Parkland. Thus the rule becomes vague because those seeking to place their literature or leaflets in the waiting rooms of the hospital have no idea whether their expressions constitute 'solicitation' under the 'no solicitation' rule". (670 F.2d at 635).

The Administrator testified that the board had not defined the term "solicit" but that he used the following definition of solicitation in enforcing the "no solicitation" rule: "solicitation means to accost, to influence to do evil, to agitate and create anxiety" (Record page 62-63). When asked how the public would know what activities were included under the rule, the Administrator testified that he would "assume they had read the dictionary" (Record page 64). Such a standard is no standard at all. Rather, it gives the hospital Administrator the unbridled discretion to determine the type and content of solicitation that would "accost", "influence to do evil", or "agitate and create anxiety". As this Court has said in

*Shuttlesworth v. Birmingham, supra,*

> it is settled by a long line of recent decisions of this Court that an ordinance which, like this one, makes the peaceful enjoyment of freedoms which the constitution guarantees contingent upon the uncontrolled will of an official . . . is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms. *Staub v. Baxley,* 355 U.S. 313, 322, 2 L.Ed.2d 302-311, 78 S.Ct. 277 (1958).

The underlying chilling effect which such an uncertain standard will have on the exercise of First Amendment rights is underscored by the inability of the successive hospital administrators to reach reconcilable results concerning Plaintiff's publications and the "no solicitation" rule. In response to questioning about the standards under which "solicitations" would be approved or refused, the former administrator testified that "it (the solicitation) would be judged on its individual merits in accord with what was requested. I do not know how much more specific I can be about that" (Record page 223).

Apparently using that standard, the former administrator determined that the second leaflet (Plaintiff's Exhibit 4) "would be acceptable and we would have posted it" (Record page 224). However, in response to a similar question about the same leaflet even being placed in Parkland Hospital, the current Administrator determined the leaflet to be "inappropriate in our facility (since) I think we do deliver decent health care" (Record page 108). Clearly, the "no solicitation" rule is enforced by the subjective whim of the Administrator rather than by an objective, defined standard. As the Supreme Court has stated in *Grayned v. City of Rockford, supra,* at 108,

> It is a basic principle of due process that an enactment

is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, juries and judges for resolution on an *ad hoc* and subjective basis with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms. [footnotes omitted].

Likewise, the panel finds that "the 'no solicitation' rule is also overbroad in that it potentially reaches and restricts every single mode of expression, including pure speech." (670 F.2d at 633). In response to a question as to whether a patient sitting in the pharmacy waiting room would be prevented by the "no solicitation" rule from standing up and saying to fellow patients, "let's go address the Board of Managers" (Record 243-244), the Chairman of the Board of Managers testified that, "the solicitation policy is intended . . . to prevent . . . patients from being disturbed . . . and such a hypothetical thing as you were talking about would be most disturbing and I would hope that employees and others on the staff would go over to that person and try to quiet him down to stop such a disturbance" (Record 245-246).

Once a protected interest in speech has been found as has been done by the Trial Court and the Court of Appeals

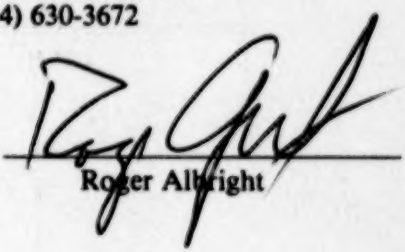
below, it is incumbent upon the Defendant to prove that there is a compelling state interest in the total ban of the protected speech and that nothing less than a total ban would meet this compelling state interest, *Lovell v. Griffin,* 303 U.S. 444, 82 L.Ed. 949, 58 S.Ct. 666 (1938), *Cox v. Louisiana,* 379 U.S. 559, 95 S.Ct. 476 13 L.Ed.2d 487 (1965). This, the Defendant has not done. Rather, "even expressions that could in no way disrupt the purposes of the hospital could be prohibited under the rule if they were determined by the hospital administrator to constitute solicitation" *(Dallas Ass'n., Etc., supra,* 670 F.2d at 633).

Clearly, the present posture of this action does not warrant review by this Court at the present time. The Panel below has not created far reaching, First Amendment law on an issue of first impression in that or any other Circuit, but rather has merely remanded this matter to the District Court to develop a very restrictive rule in accordance with its finding that "ACORN activities including solicitation or the distribution of leaflets, are incompatible with the primary activities of all areas where patient care is being administered." (670 F.2d at 633). As the panel stated, "we are not chastising Parkland for its sensitivity to patient needs, but we are, under clearly established constitutional principles, requiring that standards must be set forth that are consistent with both patient needs and freedom of expression. Moreover, some machinery for review must exist so that decisions by the administration as to what areas are susceptible to disruption might be challenged." (670 F.2d at 632, 633). Clearly, it would not be in the best interest of judicial economy for this Court to consider this action until such a rule had been enacted and a record regarding same established in the Courts below.

## CONCLUSION

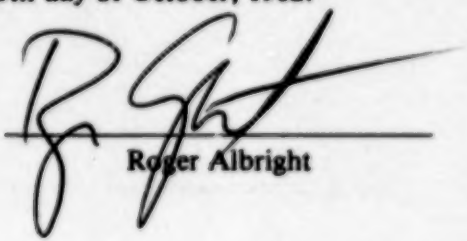
For the foregoing reasons, Respondents respectfully suggest that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit be refused.

Respectfully submitted,
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Brief in Opposition to Petition for Writ of Certiorari has been served on the counsel for Petitioner, Mr. Earl Luna, at 2416 LTV Tower, 1525 Elm Street, Dallas, Texas 75201 by placing same in the United States Mail, postage prepaid, on this the 13th day of October, 1982.



Roger Albright